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In the Supreme Court of the United States

OCTOBER TERM, 1960.

No. 272

SQUEEZ-A-PURSE CORPORATION,
Petitioner,

vs.

BENJAMIN STILLER, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Sixth Circuit.

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To the United States Court of Appeals for the Sixth Circuit.

Petitioner, a New York corporation, which sued in the Ohio District Court for a declaratory judgment that a reissued patent No. 24,166 on a pocket purse was invalid and hence not infringed, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit which affirmed the judgment of the District Court for the Northern District of Ohio, holding the reissued patent valid and infringed on the defendants'-respondents' counterclaim. The drawing of the patent is reprinted herein as Appendix A. The entire patent appears at pp. 99a-103a, of the Appendix to Brief of Appellant to the Court of Appeals.

OPINIONS BELOW.

The memorandum opinion of the District Court is reported at 175 F. Supp. 667, 122 USPQ 147, and is printed at pp. 159a-163a in the said Appendix to Brief of Appellant (Petitioner). The opinion of the Court of Appeals, by Weicks, C.J., is reported at ___ F. 2d ___, ___ USPQ ___, and stated merely that

> "Upon consideration of the appeal,
>
> "It is ordered that the judgment of the District Court be affirmed on the memorandum opinion of District Judge Jones and that this cause be remanded to that Court for further proceedings not inconsistent with this order."

The Circuit Court's orders on the appeal and on rehearing are annexed hereto as Appendix B.

JURISDICTION.

Jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1); Part V, 19, 1 (b), clauses 1, 3 and 4, of the Revised Rules of the Supreme Court. The judgment of the Court of Appeals is dated May 2, 1960 and was entered on that date. A petition for rehearing was denied June 2, 1960.

QUESTIONS PRESENTED FOR REVIEW.

1. Have the standards for determining the presence or absence of invention in any given patent been so changed by the Patent Act of July 19, 1952, Title 35, U. S. C. section 103, as to validate a patent on a combination of old elements, no one of which elements performs any new different, unusual or unexpected purpose or function in the combination?

2. Has the Court of Appeals for the Sixth Circuit, in affirming on the memorandum opinion of the District Court, applied correct criteria for determining invention, as set forth in *The Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp.* (1950), 340 U. S. 147, 95 L. Ed. 162, 87 USPQ 303?

3. May clear disclosures of properly granted prior patents, offered as evidencing lack of invention in a patent in suit, be given little or no weight simply because the said prior patents were not proven *by the proponent** thereof to have been commercialized successfully?

STATUTE INVOLVED.

Patent Act of July 19, 1952, Title 35, U. S. C., Section 103.

"A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 12 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made. July 19, 1952, c. 950, sec. 1, 66 Stat. 797."

STATEMENT OF THE CASE.

BACKGROUND:

Plaintiff-petitioner was in commercial operation with the accused article when the original patent issued. Threatened by the patent owner, plaintiff-petitioner immediately offered to accept service of process in a suit to deter-

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* Emphasis applied throughout.

mine the validity of the patent. It did so on a second occasion, but the offers were not accepted. Petitioner also cited to the Ohio patent owner the numbers and dates of certain prior patents overlooked by the patent examiner which prior patents were considered to show lack of invention of the patented article. Thereupon, one day short of the two-year statutory bar, the patentee surrendered the original patent and reissued it with three claims broader than those originally granted. Even so, the patent owner did not sue the plaintiff-petitioner, and the New York entity went to Ohio to protect its customers from harassment, to secure a judgment declaratory of its rights to continue to make and sell the accused item. Irregularities and bad faith in the securement of the reissue need not concern us further; they are mentioned merely as cumulative reasons calling for review by this Court.

THE ARTICLE OF THE PATENT:

The patent relates to a pocket purse for such small articles as coins, keys and the like. As stated by the District Court (160a-161a), claim 3 of the patent provides a "quick opening and self-closing container for articles comprising" some seven elements, identified and described as follows, with the matter in parentheses being added to relate the elements to the patent drawing, Appendix A hereto:

"A. a unitary envelope of material having elastic properties similar to those of soft rubber

(reference numeral 1)

"B. said envelope defining a substantially fully closed interior volume

(Figs. 1, 2 and 3)

"C. having a depth relatively small in comparison to dimensions tranverse to its depth

(Figs. 3 and 5)

"D. and said envelope having a substantially transverse normally closed slit in one face

(reference numeral 3)

"E. extending from one periphery to an opposite periphery

(Figs. 1 and 5)

"F. said envelope having oppositely disposed through apertures

(reference numerals 4 and 5),

"G. and the respective ends of said slit communicating with respective apertures

(Figs. 1, 3 and 5)"

Molded in one piece of recently made available elastic material offered for such operation, by an old method (which the patentee unsuccessfully tried to patent), the article was merely a variation on the well-known similarly shaped and proportioned pocket purse of leather which the patentee admittedly saw and copied. The leather coin purse operated in the same manner as did the patented article, and it is still on the market.

THE DECISION BELOW:

The District Court found the first five of the listed elements to be old in the very art to which the patented gadget pertains; respondents do not challenge such finding.

The District Court, however, erroneously held that the respondents relied upon the sixth and seventh elements "F" and "G" as

"* * * prime novel and valid inventive features of the defendants' patent."

Respondents made no such claim, either before the Patent Office in seeking its patent or before the District Court on trial or in brief, or before the Court of Appeals on argu-

ment or in brief. That this holding by the District Court was clearly erroneous and insupportable is established by the fact that respondents' counsel admitted both elements "F" and "G" to be old and by the further fact that respondents' expert witness admitted—in open court—that the structures, purposes and functions of elements "F" and "G" were fully disclosed by at least two prior patents (Butler and Fulton). *The District Court ignored or overlooked these vital admissions by respondents.*

The District Court then (161a) conceded that the

> "* * * defendants' article is not of striking inventive quality; it is in fact one of modest proportions, but 'tis enough, 'twill serve' as an article made up of a unique and unitary combination of old elements with new and useful elements (F and G)."

In the face of the clear showings of the prior art and of the admissions by respondents, and in the face of the inability and failure of respondents to identify any new element or any new or unusual or different or unexpected result flowing from the combination of the old elements, it cannot satisfactorily be explained how the last quoted statement can stand unless the criteria for the determination of invention, as set forth in *Great Atlantic & Pacific* in 1950, are no longer the law of the land and have been superseded by relaxed or different standards under the Act of July 19, 1952 enunciated thereafter.

Apart from thus flying in the face of the record proofs, the District Court (and the Court of Appeals) then made an even more serious and prejudicial error, in rejecting prior art patents offered by petitioner to show lack of invention in the patent in suit because the devices of the prior patents had not been proven by the petitioner to have been commercially successful. The District Court's opinion, adopted in toto by the Court of Appeals, stated:

> "* * * the evidence does not disclose any commercial use or manufacture of the prior patents offered by the plaintiff against the defendants' product. They are so-called paper patents considered not as anticipation but as testing the novel character of the challenged patent as an advance over the earlier disclosures. Republic Steel v. Youngstown Sheet and Tube, 272 F. 2d 386, CCA 6. For that reason it is not deemed necessary here to analyze and point out wherein the prior teaching fails to anticipate the novel features which are the prime support for validity."

and at a later point in its decision, the District Court held

> "None of these patents* were produced or marketed, nor, as I think, do their features and construction give any assurance that they could be successfully made to operate or be marketed (Witness DeJong)."

The record contained no support whatsoever for this last quotation with respect to the witness DeJong, and the respondents abandoned the Court's opinion on this point. However, the Circuit Court—in affirming on the opinion of the District Court—obviously accepted this as a correct statement of fact and of law.

That the District Court, on petition for rehearing, admitted ineptness in the language of its decision and that the Circuit Court went along with it, are other circumstances calling for intervention by this Court.

SPECIFIC ERRONEOUS HOLDINGS:

In dismissing the complaint directed to all eight claims of the reissue (the first five carried over from the original grant and the three added by the reissue), and in awarding judgment of validity and infringement to the

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* The Court made no reference to the Butler patent (133a), a most pertinent disclosure of elements "F" and "G."

patent owners on the counterclaim, the District Court and the Circuit Court made a number of indefensible holdings, as follows:

1. That any of the elements of the combination was new, or that any element performed in the combination any new, different, unusual or unexpected purpose and function.
2. That a litigant offering prior patents to support the defense of lack of invention in the patent in suit has the burden of proving that the structures of the prior patents are operable *and* commercially successful.
3. That damaging admissions forced from the patent owner may be ignored.
4. That uncommercialized prior patents need be given no weight as bearing on the lack of invention of the patent in suit.

ARGUMENT.

REASONS FOR ALLOWANCE OF THE WRIT:

This case involves a simple mechanical patent on a gadget item, as appears from the drawing thereof, Appendix A hereto. Nevertheless, it presents for solution by this Court a number of issues of major importance in the further and proper administration of the laws relating to patents, particularly since this Court has issued no pronouncement on the effect of section 103 of the Act of 1952 on the standards of invention since the law became effective. Such issues require a clear-cut, unequivocal expression of opinion and direction by this Court so that the Bench, the Bar and the administrative officials of the Patent Office may be guided properly henceforth.

1. Has Section 103 changed the standards by which "invention" is to be determined?

The section, entitled "Conditions for patentability; non-obvious subject matter," reads:

> "A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 12 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made. July 19, 1952, c. 950, sec. 1, 66 Stat. 797."

The Courts of Appeals of the First, Third, Fourth, Fifth, Seventh and Ninth have consistently held that this section did no more than codify existing law, wherefore the doctrine of *Atlantic & Pacific* maintains. *Hawley Products Co. v. United States Trunk Co.*, 1 Cir., 259 F. 2d 69, 72, 118 USPQ 424, 426-427; *Stanley Works v. Rockwell Mfg. Co.*, 3 Cir., 203 F. 2d 846, 849, 97 USPQ 189, 191; cert. den. 346 U. S. 818, 99 USPQ 491; *Interstate Rubber Products Corp. v. Radiator Specialty Co.*, 4 Cir., 214 F. 2d 546, 548-549, 102 USPQ 373, 381; *Vincent v. Suni-Citrus Products Co.*, 5 Cir., 215 F. 2d 305, 315-316, 102 USPQ 373, 381, cert. den. 348 U. S. 952, 104 USPQ 409; *Helms Products, Inc. v. Lake Shore Mfg. Co., Inc.*, 7 Cir., 227 F. 2d 677, 682-683, 107 USPQ 313, 316-317; *Pacific Contact Laboratories, Inc. v. Solex Laboratories, Inc.*, 9 Cir., 209 F. 2d 529, 532-533, 100 USPQ 12, 14, cert. den. 348 U. S. 816, 103 USPQ 424.

The Second Circuit, in *Lyon v. Bausch & Lomb Optical Co.*, 224 F. 2d 530, 535, 106 USPQ 1, 5, cert. den. 305 U. S.

911, 107 USPQ 362, held that Section 103 set forth a relaxed standard of invention and constituted all but an outright reversal of the doctrine of *Cuno Engineering Corp. v. Automatic Devices Corp.*, 314 U. S. 84, 51 USPQ 272. The Second Circuit has followed this line since and has repeated its finding of a relaxed standard of invention in Section 103 in subsequent decisions.

Prior to its decision here, the Court of Appeals for the Sixth Circuit had adhered to the proposition that *Atlantic & Pacific* was the law to be followed in considering patent claims to combinations of old elements wherein no new, different or unusual or unexpected result flowed from the combination, *Bobertz v. General Motors Corp.*, 228 F. 2d 94, 99, 107 USPQ 338, 341, cert. den. 352 U. S. 824, 111 USPQ 466. However, its decision affirming the memorandum opinion of the District Court in this case is a departure from *Bobertz*, and leaves no doubt that the Sixth Circuit is currently applying a standard of invention relaxed considerably from that expressed in *Atlantic & Pacific*.

It is clear, therefore, that a conflict exists between the Sixth and Second Circuits on the one hand and the remaining Circuits whose decisions on Section 103 we have been able to note.

2. **Have the courts below applied the proper criteria in finding the patent in suit to disclose patentable invention?**

If *Atlantic & Pacific* remains, unaffected by Section 103, the aggregation of old elements set forth in the patent in suit cannot sustain the finding of inventiveness; thus the Courts below committed error in finding invention to be present in the Stiller reissued patent.

The District Court found elements A, B, C, D and E, the first five of the seven elements of claim 3, to be old.

Respondents admit that elements F and G, the sixth and seventh elements in the claim, similarly were old. A cursory inspection of the disclosures of the prior patents, pp. 117a-148a, Appendix to Brief of Appellant, will confirm the age of every element in the patent claims. There is in the combination of claim 3 no single element which is new.

The statement by the District Court, that defendants' article was "made up of a unique and unitary combination of old elements with new and useful elements (F and G)" is admitted by respondents to be based on a non-existent premise, i.e., that said elements F and G were new. The statement is factually incorrect, and the inaccuracy undoubtedly motivated the District Court's admission of ineptness in the language of the decision (p. 25b of Appendix to Brief of Appellee). Uniqueness implies difference or novelty; with no new or different element, there could be nothing unique about the combination of claim 3, and the prior art admittedly taught unitary combinations in coin purses, either structurally or operationally.

If there be any commercial success which is unrelated to any novel element in the claim, such factor is not enough to sustain the weight of a monopoly against the public interest. Since respondent's sales weighed so heavily in the opinions of the courts below, and since the improper reliance on the presence of new elements was so heavily relied upon, it follows that incorrect criteria were used by the courts below in holding the aggregation of elements A to F to be inventive. Of course, if *Atlantic & Pacific* is no longer to be followed, a different situation is presented, but even under *Hotchkiss v. Greenwood*, 52 U. S., 11 How. 248, the patent in suit would not be valid; see 52 U. S., 11 How. 267. Therefore, this Court is called upon to correct a decision by the courts below in conflict with applicable decisions of this Court.

3. May paper patents be considered only to show lack of novelty or may they be considered also to show lack of invention?

Plaintiff-petitioner offered six prior patents (117a-148a) to establish lack of invention in the reissued patent in suit, in that the said reissue disclosed no more than that the patentee put together by an old method and old material—a number of elements from the prior art, thereby to obtain only the simple sum of the properties of the old elements considered individually. It was not plaintiff-petitioner's position that any one prior patent anticipated the reissue as considered by the Trial Court, but merely that what the patentee had done lacked invention. Defendant-respondents' counsel, aware of his inability to overcome the damaging effects of the prior patent disclosures, attacked the prior art by way of avoidance so that the art would not be considered. Counsel said (39a):

> "My hope is to show they are paper patents. There is no evidence of use that this plaintiff can give."

Thereupon, the courts below—in view of plaintiff-petitioner's failure to prove affirmatively that the prior patents had been successfully commercialized, although the leather pocket purse was admittedly still being made and sold—gave no weight to the prior patents, citing *Republic Iron & Steel Co. v. Youngstown Sheet & Tube Co.* (6 Cir. 1921) 272 Fed. Rep. 386. They did so also because of unsupported conclusions that the prior art was inoperable. This too was contrary to authority since patents when duly issued are prima facie operable and the burden was on the defendant-respondents to prove inoperability of the prior art, a burden which defendant-respondents did not even attempt to discharge.

The District Court had posed three questions (160a):

"There were three questions which the court, at the close of trial felt were controlling to a decision on the issues in this case:

* * * * *

Third, the effectiveness of earlier art as *anticipation* where there was no commercial use or manufacture?"

It answered the third question by saying:

"As to the latter, the evidence does not disclose any commercial use or manufacture of the prior patents offered by the plaintiff against the defendants' product. They are so-called paper patents considered not as anticipation but as testing the novel character of the challenged patent as an advance over earlier disclosures. Republic Steel v. Youngstown Sheet and Tube, 272 F. 386, CCA 6."

In *Republic*, at 272 Fed. Rep. 390, the Court first said that:

"* * * mere failure (of the prior disclosures)* to get commercial recognition, or indeed, failure to deserve that recognition until somewhat improved, is not inconsistent with full validity as a patent or full effect as an anticipation."

And almost immediately thereafter said:

"* * * that, where the question is not one of full anticipation, but is whether the advance shown by the later over the earlier device is of inventive character, the failure of the earlier to get recognition in the trade may be persuasive evidence that an apparently slight advance was more important than it seems."

If this language has any meaning, it is that uncommercialized prior patent disclosures may be considered as possibly anticipatory of a patent in suit but that such disclosures

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* Material in parentheses added.

were not to be considered to show lack of invention in the later-issued patent. It was so construed by the same court in *Campbell v. Mueller* (1947), 159 F. 2d 803, 72 USPQ 295.

In *Campbell*, the Court said, at 159 F. 2d 808, 72 USPQ 300, that:

> "* * * lack of commercial recognition of prior art devices is not inconsistent with their full effect as anticipation, * * * Republic Iron & Steel Co. v. Youngstown S. & T. Co., 6 Cir., 272 F. 386."

and then went on to say that the second quotation above from *Republic* qualified this, and in a situation where the prior art lacked the important concept and structural elements of the patent in suit, ruled that:

> "In a case of this kind commercial recognition is particularly important and the doctrine of Republic Iron & Steel Co. v. Youngstown S. & T. Co., supra, that a slight advance is more important than it seems, is peculiarly applicable."

Since 1947, at least two District Courts (from the Seventh and Fourth Circuits) have cited *Campbell* as authority for the proposition that "paper" patents may not be considered on the question of lack of invention. In *Holstensson v. Webcor*, (D. C., N. D. Ill. 1957), 150 F. Supp. 441, 446-447, 112 USPQ 463, 467, and in *Bowser, Inc. v. Richmond Engineering Co.* (D. C., E. D. Va. 1958), 166 F. Supp. 69, 75-76, 118 USPQ 278, 283, the following statement appears:

> "Prior paper patents have little, if any, weight on the question of patentable invention, as distinguished from anticipation. Campbell v. Mueller, 159 F. 2d 803, 809 * * *."

As late as 1956, the Court of Appeals for the Sixth Circuit made a verbal distinction between invalidity of a

patent because of anticipation and because of lack of invention. *Coat Loaders & Stackers, Inc. v. Henderson*, 233 F. 2d 915, 919-920, 109 USPQ 332, 336. Mr. Justice Stewart, then on the Circuit Court bench, said:

> "That the Teagarden patent was essentially a paper patent, meeting with no commercial success and having no actual influence upon the practical manufacture of tire dismounting apparatus, is of course irrelevant to the question of whether its disclosure constituted an anticipation. The 'paper' status of the Teagarden patent would have bearing only in the determination of that patent's validity or scope. Western States Mach. Co. v. S. S. Hepworth Co., 2 Cir., 1945, 147 F. 2d 345, 350 (64 USPQ 141, 146); E. J. Books Co. v. Klein, 3 Cir., 1940, 114 F. 2d 955, 957 (46 USPQ 537, 540); In re Coey, 1951, 190 F. 2d 347, 351, 38 C. C. P. A. Patents 1200 (90 U. S. P. Q. 216)."

Back in 1953, McAllister, C.J., of the Sixth Circuit, in *Allied Wheel Products, Inc. v. Rude*, 206 F. 2d 752, 760, 97 USPQ 510, 517, a most notable and carefully written opinion, had said:

> "* * * 'three elements are requisite to validity, to wit: novelty, utility, and invention.' Some things are not patentable because, though new things, they are not invented things. Such things lack patentability not because they lack newness, but because they lack invention. (citations) Anticipation belongs in the field of novelty. To anticipate an invention is to negative novelty; but even though a patent is not anticipated, and is concededly novel, it may lack invention. * * * However, if a new assemblage of old things amounts only to aggregation and not to combination, or if it results in no new operation, the patent which covers it will be void for want of invention, though not void for lack of novelty."

Mr. Justice McAllister then noted (206 F. 2d 761, 97 USPQ 518) that

> "* * * in a number of cases, the word 'anticipation' is used, not as negativing novelty, but as equivalent to invention * * *,"

so that a number of prior patent disclosures

> "* * * may be combined to establish 'anticipation' of invention."

It will be clear that "anticipation of invention" in this context and "lack of invention" mean the same thing, and that in many of the decisions the prior art was used to invalidate a patent because there was "anticipation" or "lack" of the alleged invention there-involved. That this is so appeared in an earlier decision by the same bench of the same Sixth Circuit Court, per Allen, C. J., in *Royal Patent Corp. v. Monarch Tool & Mfg. Co.* (1953), 203 F. 2d 299, 301, 97 USPQ 197, 198, which flatly and unequivocally overruled *Republic v. Youngstown* in the following statement:

> "Appellants urge that the patents relied on are only paper patents but it is well established that this is immaterial upon the question of *invention*."

citing, among others, the Second Circuit decision in *Western States v. S. S. Hepworth* relied on by Mr. Justice Stewart in *Coat Loaders v. Henderson, supra*, p. 15.

The difficulty between using prior patents of paper status against validity of a later patent either for anticipation or for lack of invention arose from the language used by the Supreme Court in *Pickering v. McCullough*, 104 U. S. 310, at 319. The patent in that litigation was attacked on the grounds of lack of novelty and anticipation by a publication and two prior patents. The patentee had combined a rib and a mold, both separately old, and the Court had said, at 104 U. S. 318, "This rib Nimmo substituted for the old one in the same combination. And this

is the whole of the invention. Upon the principle stated, there is no *invention* in it," and then concluded thusly:

> "It is objected, however, that the machines described in these patents are mere paper machines, not capable of successful practical working. But on examination it sufficiently appears, we think, that the objections can be sustained only as to minor matters of detail in construction, not affecting the substance of the invention claimed, and could be removed by mere mechanical skill, without the exercise of the inventive faculty. In this view, the Wise and Smith patents are not rendered inefficient as *defenses* in this suit."

Certainly, in the ultimate ruling that the patent lacked *invention*, a ruling based on the disclosures of prior paper patents, the situation should have been crystal clear. However, subsequent decisions whittled down the doctrine of *Pickering v. McCullough* to exempt therefrom paper patents used to show lack of invention, possibly because the prior invalidating disclosures in that suit had been offered under the title of "anticipations" (104 U. S. 315).

A quite recent (Dec. 6, 1957) pronouncement on the precise point was made by the Court of Appeals for the Seventh Circuit, in *Hobbs v. Wisconsin Power & Light Company*, 250 F. 2d 100, 105, 115 USPQ 371, 375:

> "Appellant finally urges that the Bredtschneider patent (above) and the Murphy patent 1,350,666, both of which are alleged to be anticipatory of the subject matter of Re. 23,272, are mere paper patents, or patents which have never been used commercially and that as such they may *not* be used to indicate a lack of invention over the prior art. *It has been held otherwise.*"

For the Court of Appeals for the Sixth Circuit to have gone back to the doctrine of *Republic v. Youngstown* despite the fact that another bench of the same court had

overruled such doctrine, constituted a failure to follow the decision of the Supreme Court in *Pickering v. McCullough*, and in sharp distinction from the decisions of the Seventh (*Hobbs v. Wisconsin*) and other circuits. This means only that a clear-cut direction should be given by this Court, all to the end that the Bench and Bar will know beyond question in which areas prior uncommercialized patent disclosures may be used for invalidation of a later-issued patent.

For the foregoing reasons, it is urged that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

DRAWING, STILLER PATENT NO. Re. 24,166, JUNE 12, 1956, FOR SELF-CLOSING CONTAINER.

(Original Filed Oct. 16, 1951.)

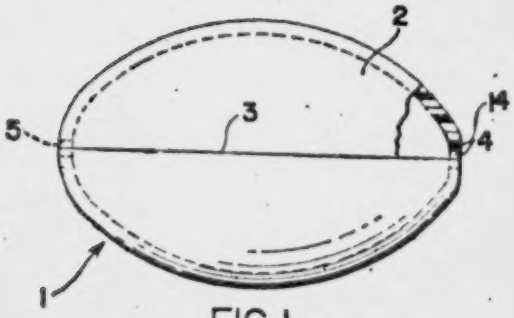

FIG. 1

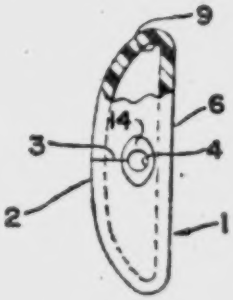

FIG. 3

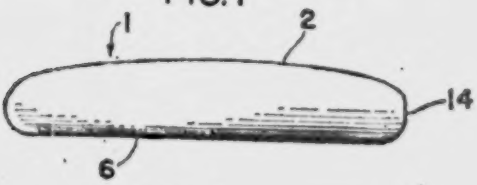

FIG. 2

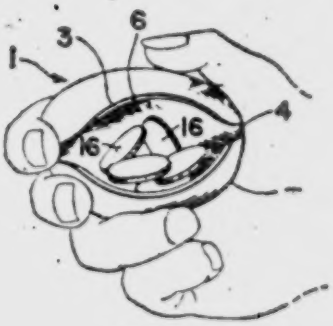

FIG. 5

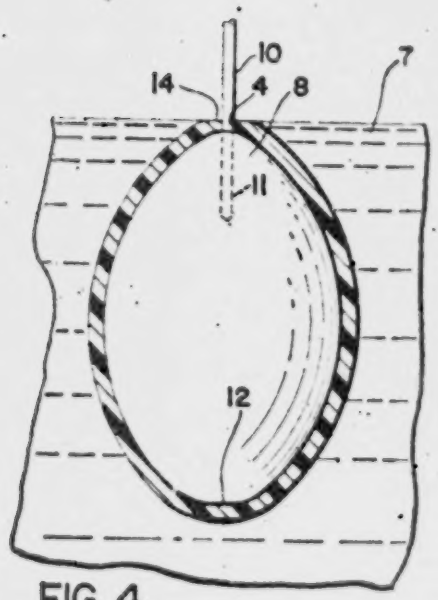

FIG. 4

INVENTOR
BENJAMIN STILLER
BY Ely & Lyze
ATTORNEYS

APPENDIX B.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(May 2, 1960.)

Upon consideration of the appeal,

IT IS ORDERED that the judgment of the District Court be affirmed on the memorandum opinion of District Judge Jones and that this cause be remanded to that court for further proceedings not inconsistent with this order.

ORDER DENYING REHEARING.

(June 2, 1960.)

Upon consideration,

IT IS ORDERED that the Petition for Rehearing be and hereby is denied.